IN THE SUPREME COURT OF THE UNITED STATES

No. 141, Original

STATE OF TEXAS, PLAINTIFF

v.

STATE OF NEW MEXICO

AND

STATE OF COLORADO

ON EXCEPTIONS TO THE REPORT
OF THE SPECIAL MASTER

MOTION FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that oral argument be allocated among the parties as set forth below. We are authorized to represent that all parties agree to the allocation of time requested in this motion.

1. This is an original action brought by the State of Texas against the State of New Mexico and Colorado seeking to enforce its rights under the Rio Grande Compact (Compact), Act of May 31, 1939, ch. 155, 53 Stat. 785, which apportions the waters of the Rio Grande Basin among the States of Colorado, New

Mexico, and Texas. Texas complains that New Mexico has depleted Texas's equitable apportionment under the Compact by allowing diversion of surface water and pumping of groundwater that is hydrologically connected to the Rio Grande downstream of Elephant Butte Reservoir, thereby diminishing the amount of water that flows into Texas. Elephant Butte Reservoir is part of the Rio Grande Project (Project), a federal Bureau of Reclamation project that was authorized and constructed before the States entered into the Compact.

On January 27, 2014, the Court granted Texas leave to file its complaint and invited New Mexico to file a motion to dismiss, in the nature of a motion under Federal Rule of Civil Procedure 12(b)(6). The United States filed a motion for leave to intervene as a plaintiff and a proposed complaint in intervention. The United States moved to intervene based on its claimed interest in protecting the operation of the Rio Grande Project operated by the Bureau of Reclamation and its treaty obligation to deliver water from the Rio Grande to Mexico. See Convention Between the United States and Mexico Providing For the Equitable Distribution of the Waters of the Rio Grande For Irrigation Purposes (1906 Treaty), May 21, 1906, U.S.-Mex., 34 Stat. 2953. On March 31, 2014, the Court granted the United States' motion for leave to intervene as a plaintiff.

New Mexico moved to dismiss the complaints filed by Texas and the United States. In the First Interim Report of the Special Master (Report), Special Master A. Gregory Grimsal has recommended that the Court deny New Mexico's motion to dismiss the complaint filed by Texas. As for the United States' complaint in intervention, the Master has recommended that the Court grant New Mexico's motion to dismiss to the extent the United States asserts claims under the Compact, but deny the motion to the extent the United States asserts claims under federal reclamation law.

2. The United States, New Mexico, and Colorado filed exceptions to the Master's Report. On October 10, 2017, the Court denied New Mexico's motion to dismiss Texas's complaint. The Court further ordered that the exception of the United States and the first exception of Colorado would be set for argument in due course. The United States took exception to the Master's recommendation that the United States complaint in intervention should be dismissed to the extent that it asserts claims under the Compact. U.S. Exception. Colorado's first exception contends that the Court should limit the claims of the United States to those based on the 1906 Convention with Mexico. Colo. Exceptions Br. 3-9.

In its reply brief, Texas supported the claims asserted by the United States to the extent they are Compact claims related

to the equitable apportionment set forth in the Compact. Tex. Reply Br. 39-40. In addition, as a sovereign State that is a party to the Compact, and as the party that has sought to enforce its rights under the Compact, Texas has a significant interest in the interpretation of the Compact and in the exceptions. For those reasons, we respectfully suggest that the Court would find it helpful to hear oral argument on behalf of both the United States and Texas. We suggest that the United States be allocated 20 minutes of argument time and that Texas be allocated 10 minutes of argument time.

In their reply briefs, Colorado and New Mexico opposed the United States' exception. Colo. Reply Br. 3-13; N.M. Reply Br. 2-32. In addition, New Mexico stated that it did not oppose Colorado's first exception. N.M. Reply Br. 1. As sovereign States that are parties to the Compact, and as parties that seek to protect their rights under the Compact, both States have a significant interest in the Compact and the Court's resolution of the United States' exception. Because the Court has ordered that oral argument be held on Colorado's first exception, we suggest that Colorado be allocated 20 minutes of argument time and that New Mexico be allocated 10 minutes of argument time.

Furthermore, because some of Colorado's argument time and much or all of New Mexico's argument time will be spent responding to the United States' exception, and because

Colorado's first exception also relates to the scope of the United States' participation in this case, Colo. Exceptions Br. 5-9, the parties agree that the United States and Texas should present argument before Colorado and New Mexico.

For those reasons, the parties propose to divide argument time as follows, with argument to be presented in the following order:

United States:	20 minutes (to include rebuttal time)
Texas:	10 minutes
Colorado:	20 minutes
New Mexico:	10 minutes

The parties believe that dividing the oral argument time as set forth above will facilitate an adequate and orderly presentation on the exceptions for which the Court has ordered argument.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

NOVEMBER 2017

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CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served with copies of the **MOTION FOR DIVIDED ARGUMENT,** via email and first-class mail, postage prepaid, this 17th day of November, 2017.

[See Attached Service List]

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November 17, 2017

Due to the continuing delay in receiving incoming mail at the Department of Justice, in addition to mailing your brief via first-class mail, we would appreciate a fax or email copy of your brief. If that is acceptable to you, please fax your brief to Charlene Goodwin, Supervisory Case Management Specialist, Office of the Solicitor General, at (202) 514-8844, or email at **SupremeCtBriefs@USDOJ.gov.** Ms. Goodwin's phone number is (202) 514-2217 or 2218. Thank you for your consideration of this request.

22-0141
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